C/PH (1948) & ebrief

So. 3017 P.H
3.9.48

39

Abstract Town-planning

Mangalore Mby - T.S.No. 1901.1. - unauthorised construction of a compound wall and gate pillars by Sri A. Narasappa - Appeal against orders of demolition - Orders passed -

Ref. No.B.4/16749-47

South Kanara Collector's Office,
Mangalore, dated: 9th December 47

From

J. F. Saunders Esq., MBE., ICS.
Collector of South Kanara.

ASST. SECRETARY TO GOVERNMENT
15 DEC 1947
EDUCATIONAL DEPT.

To

The Secretary to Government,
Local Administration, Government of Madras.

Sir,

LICENCES - Town Planning - Mangalore Municipality - 23rd Ward - T.S.No.190-1 - Unauthorised construction of a compound wall and gate pillars - Eviction notice - Proceedings stayed - Report submitted.

Reference: Petition dated: 8-11-1947 from A. Narsappa.

Sri A. Narsappa, owner of T.S.No.190-1 of 23rd Ward of Mangalor Municipality has submitted an application stating that he has been served with a notice under Section 19 of the Town Planning Act, requiring him to demolish the unauthorised construction of the compound wall put up by him in T.S.No.190-1 of 23rd Ward. As he failed to remove the same, the Special Officer and the Commissioner of the Mangalore Municipality passed orders on 11-5-1947 authorising the Town Planning and Building Inspector to arrange to demolish the unauthorised construction within seven days. The petitioner contends that he had applied for a licence on 9-12-1946 and that in spite of reminders dated 8-1-47 12-2-1947 the Municipality failed to issue the licence and that therefore he proceeded with the repairs to the old compoundwall and gate-pillars early in February 1947. He adds that he has not been served with any provisional or confirmation order as required by Section 19 of the Town Planning Act.

The site is included in the Falnir Town Planning Scheme and under Section 17 of the Town Planning Act, all constructions should be with the previous permission of the Municipality. An appeal in this case under Section 19 of the Town Planning Act lies only to the Local Government.

3. The petitioner filed an appeal to the Municipal Council which was rejected on 8-11-1947. The Commissioner immediately directed the Building Inspector to demolish the construction after taking police aid, if necessary. The petitioner alleged that he was not granted a stay to enable him to move the Government. He adds that there may be rioting and affray in case the eviction is to be carried out. The Commissioner's direction to the Building Inspector to take Police aid also leads one to expect rioting etc. The petitioner bases his claim on legal points which if proved, will change the trend of the orders passed by the Council. In the above circumstances, I have stayed the orders of the proceedings until further orders under Section 36(2) of the District Municipalities Act, 1920.

4. The petition was referred to the Commissioner, Mangalore Municipality. He reports that the statement of the petitioner that provisional and confirmation orders under Section 19 of the Town Planning Act have not been served is not correct and that the orders were served on him in person and his signature obtained on 12-7-1947 and 25-8-1947. He is silent about the delay over three months in communicating orders on the petitioner's application for permission to reconstruct the compoundwalls and gate which is material in this case. But I am not dealing with this matter as I am only proposing a stay for two months from this date in order to enable the petitioner to approach the Government and get his claims settled there. I submit that my action may kindly be approved and recommend that the proceedings in this case may be stayed for two months from this date. I have separately informed the petitioner that he may appeal to the Government and obtain stay orders from the Government by that time.

L.A. Dept. (A)

For Collector.

Education and Public Health
Department

Endorsement No. 98745/47-1-F2-P.H.
dated 18.12.1947

Referred to the Director of
Town Planning for remarks.

Assistant Secretary to Government.

16/12/47
17.12.47

To the Director of Town Planning.

N.Dis.4691-47.

Office of the Director of Town Planning
Old High Court Buildings, Madras I.
dated 27th December 1947

issue necessary instructions to the Commissioner Mangalore Municipality to stay further proceedings against the party for a period of two months or until such time when Government passes final orders in the matter if the party makes an appeal to Government under section 19(3) of the Town Planning Act.

For Director of Town Planning.
10.1.48

jdd. 5-1.

9.1.48

To

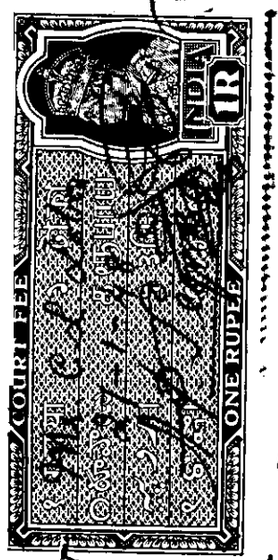
The Secretary to Government,
Education & Public Health Department,
Fort St George, Madras

VF

Papers, please - Advocate's clerk action Advocate's further adjournment's further adjournment's Draw the file Receive copy in court. Issue copy.

BEFORE THE GOVERNMENT OF MADRAS, FORT St.George, MADRAS.

Sri A. NARASAPPA, Proprietor
Shri Sharada Transport Service
Attavar, Mangalore Town. ... Appellant.



Sub: Licences - alleged unauthorised construction of Compound wall and gate pillars in T. S. No.190-1 of 23rd Ward of Mangalore Municipality - alleged contravention of the provisions of the Falnir Tow Planning Scheme - Commissioner's order for demolition with Police Aid.

Ref: (1) 8-11-47 - Extract of the Proceedings of the Mangelore Municipal Council (Copy enclosed).
(2) 13-11-47 - Very urgent Proceedings of the Commissioner of Mangalore Municipality in C3-No.-10790/47 (Copy enclosed).
(3) 20-11-47 - Proceedings of the Collector of South Canara in Ref. No.B4.16749-47 ordering stay of further action under section 36(2) of M. D. M. Act (Enclosed).
(4) 9-12-47 - Proceedings of the Collector of South Canara in Dis. No.16749-47 (Enclosed)
(5) 11-3-47 - Order of the Commissioner, Mangalore Municipality in R. F. No.54/47 -15947/47 on the application dated 9-12-46 of the appellant for Licence.

The abovenamed Appellant begs to prefer this appeal (1) against the resolution of the Mangalore Municipal Council dated 8-11-1947 -- rejecting this appellant's appeal and (2) against the Order of the Commissioner, Mangalore Municipality in C3. No.-10790/47 ordering demolition of this appellant's compound wall and gate pillars, on the following among other grounds:--

1. The resolution of the Municipal Council is unjust, unfair and unsatisfactory. The Order of the Commissioner is equally unjust and unfair and is also illegal, high-handed and uncalled for.

2. The Municipal Council is not justified in summarily rejecting the appeal, relying blindly upon the alleged note of the Commissioner

without stating the reasons for its decision. The Council, having given notice to this appellant of the date of hearing of his appeal and having heard the appellant, was bound to decide the appeal on both the questions of Law and facts raised and urged in the appeal.

3. This appellant is the Proprietor of the Shri Sharada Transport Service of South Canara District and owns a large number of lorries and also cars, which are engaged for the transport of Coffee and Tea from the various estates in Mysore to the Companies in Mangalore Town and also to convey loads of food, manure, tiles etc. to the estates. These loaded lorries have often to halt for the nights in appellant's premises. The old compound wall was very much in disrepair. This appellant therefore on 9-12-46 applied to the Municipality for Licence to construct a new compound wall with gate pillars in order to have suitable protection to the lorries with loads costing several thousands of rupees. As the appellant did not receive any orders on his application in spite of reminders, for a period of three months i.e. till 9--3--47 either granting or refusing the licence applied for, this appellant gave up the idea of constructing a new compound wall with gate pillars and proceeded with only the very urgent and necessary repairs to the existing old compound wall at a cost of Rs.800/-. and odd.

4. Appellant did not construct any gate pillars. Nor has he constructed any new compound wall. Appellant has only repairs his old existing compound wall in its old site itself, for which the Municipality is not entitled to object. The charge against this appellant that he has constructed new compound walls with new gate pillars is unfounded and false.

5. In any event, Municipality is legally entitled to demolish the appellant's existing and repaired compound wall. For this position, appellant relies on the provisions of

section 17 of the Town Planning Act, which clearly states that if the Council or responsible authority omits for three months from the date of the application to communicate to the applicant orders thereon, granting or refusing the licence applied for, it shall be deemed to have granted the permission. This appellant applied on 9-12-46 for the licence and the Municipality or the responsible authority having failed to communicate this appelant the orders thereon for three months i.e. till 9..3..47, the Municipality or the responsible authority are deemed to have granted the permission applied for, be it for the construction of the new wall or repairs to the old wall.

6. This appellant has not offended the provisions of clauses 9 (a) and 9 (b) or any other provisions of the Falnir Town Planning Scheme, as alleged by the Commissioner. Nor has this appellant been given any provisional or confirmation orders under section 19 of the T. P. Act.

7. The Falnir Town Planning Scheme was sanctioned by the Government in G. O. No.1631 dated 3rd. May 1937. Under the provisions of the said Scheme, every owner is entitled to continue to use the land for the purpose for which he was using it on the date of the Scheme. The said Scheme further provides that any land in the area required for the purpose of the Scheme should be acquired by the Municipality or the responsible authority, by purchase, exchange or otherwise. For over 10 years the Municipality or the responsible authority has taken no steps whatsoever to acquire this land in question for widening the road. Even after the appellant's application for licence dated 9-12-46, no orders thereon were communicated to this appellant under section 17 of the T. P. Act. The appellant is therefore legally entitled under the provisions of the M. D. M. Act, the T. P. Act and the Falnir Town Planning Scheme, to continue to use the land for the purpose for which he and its predecessors in title were using it

on the date of the Scheme, either by repairing the old wall or by re-constructing it or otherwise.

8. Though all the above points of law and points of facts were urged before the Municipal Council on behalf of this appellant, the learned councillots many of whom are experienced lawyers, turned a deaf ear to all the said points and sammarily rejected the appeal relying entirely on the Commissioner's Note, the contents of which were not revealed to this appellant. There was complete denial of justice to this appellant and without even giving breathing time to this appellant to appeal to higher authorities, orders were issued by the Commissioner within 3 days of the Council's decision, for the demolition of the compound walls and gate pillars WITH POLICE AID.

9. This unfortunate appellant was forced to rush before Collector for protection under section 36 (1) (c) and (2) of the M. D. M. Act. The Collector was pleased to order stay of further action by the Municpality and has given 2 months time from 9-12-47 to this appellant to appeal to the Government.

10. Hence this appeal.

This Appellant therefore humbly prays that the Government may be pleased

(1) To accept this appeal.

(2) To call for the connected records from the Mangalore Municipality in C3-No.-10790/47 and R. F. No.54/47 - 15947/47. p11 ante p17 ante

(3) To call for the connected records from the Collector of South Canara in Ref.B4-16749-47 dated 20-11-47 and D. Dis No.16749-47 dated 9-12-47. pp13-15 ante

(4) And after perusing the records and after hearing

this appellant quash the Orders of the Commissioner for demolition of appellant's compound wall in T. S. No.190-1 of 23rd Ward of Mangalore Municpality.

The appellant further prays that as the period of 2 months granted to him by the Collector of South Canara in his D. Dis.No. 16749-47 dated 9-12-47 expires to-day, emergent Orders for stay of furtner action in the matter may be issued to the Commissioner, Mangalore Municipality and further prays that the said Orders may be communicated to the Commissioner by WIRE at appellant's cost.

M A N G A L O R E.)
)
Dated 9..2..1948.)

A P P E L L A N T.

Extract form the proceedings of the Municipal Council, Mangadore dated the 8th November 1947.

X X X

35. C3/No. 10790--47. Appeal petition dated the 25th Septr.47 from Sri A. Narsappa T. S. No. 190-1 of 23rd ward, Attavar, Mangalore Town against the eviction orders of the unauthorised construction of compound wall and gate pillars in the site T. S. No. 190-1 of 23rd ward issued by the Commissioner in C3/10790--47 dated the 13th Septr. 47 and Commissioner's note dated the 28th September 1947, that no appeal lies to the council.

X X X

Appeal is rejected.

X X X

Municipal Office, Mangalore,
Dated the 8th November, 1947

Sd. B. Gangadhar Das.
Chairman in-Charge.

True extract is granted to Sri M. Gopalakrishna as per his application dated 18th November, 1947.

29/11/47

COMMISSIONER,
MANGALORE MUNICIPALTIY.

Copied by: 29/11/47

Compared By: 29/11/47

29/11/47

Very urgent.
C3.No.10790/47.

Proceedings of the Commissioner, Mangalore Municipality, Mangalore, dated the 13th November, 1947.

Sri. M. Narayana Shenoy, B.A.,B.L.,

Subject:- Licences - Unauthorised construction of compound wall and gate pillars in T.S.No.190-1 of 23rd ward abutting Nandigudda road - Contravening the provisions of the Falnir Town Planning scheme - Eviction - ordered.

Ref. (1) This office Proceedings C3/10790/47 dated 13-9-47 directing and authorizing the Town Planning and Building Inspector to demolish the unauthorised construction of compound wall and gate pillars and appeal dated 25-9-47 thereon to the Municipal Council from Sri A. Narsappa.

(2) Council Resolution No.35 dated 8-11-47 rejecting the appeal.

Sri A. Narsappa is informed that the Municipal Council in its Resolution referred to ½ above has rejected his appeal dated the 25th September 1947, against the eviction orders of the unauthorized construction of compound wall and gate pillars immediately adjoining the public street (Nandigudda road) in T.S.No.190-1 of 23rd Ward.

The building Inspector, Mangalore Municipality is hereby directed and authorized to arrange to demolish the unauthorized construction referred to above and report the fact to this office within seven days of the receipt of this order with the bill of cost towards demolition charges. He may take police aid, if necessary.

Sd. M. Narayana Shenoy,
Commissioner.

Forwarded/ by order.

Sd.
Manager. 15-11-47.

To
Sri A.Narsappa, T.S.No.190-1 of 23rd ward,
Copy for service.

Copy to the Town Planning and Building Inspector, through the Town Planning Officer.

Copy to Town Planning Officer.

Copy to Circle Inspector of Police for favour of information.

Compd. 15-11-47.

V/15-11-47 p.

(True copy)

Ref:34-16749-47.

Proceedings of the Collector of South Kanara dated 20-11-47

Smt J.F.Saunders,Esq., M.B.E.,I.C.S.

LICENCE: Town planning Act - Unauthorised construction of a Compound wall and gate Pillars T.S.No.190-1 of 23rd Ward - Mangalore Municipality - Eviction - Stay - ordered.

Read: Petition dated 18-11-47 from A. Narsappa. - P.D. 63-55 (A)
2. This Office L.Dis.12814-47 dated 7-10-47.

Under Section 56(2) of the Dt. Municipalities Act 1920, the Collector of South Kanara directs that further proceedings in this case are stayed until further orders.

(By Order) J. Mathews 20/11/47

Huzur Head Clerk.

Sri A. Narsappa thro' Mr. C.L.Lobo B.A.,B.L., Vakil, Mangalore.

The Commissioner, Mangalore Municipality ~~with the petition~~.

D.Dis.No.16749-47.

Proceedings of the Collector of South Kanara dated 9-12-1947.

J. F. Saunders Esq., MBE., ICS.

LICENCES - Town Planning - Mangalore Municipality - 23rd Ward T.S.No.190/1 - Unauthorised construction of a compound wall and gate pillars - Eviction notice - Stay of proceedings - Orders passed.

Ref: Petition dated 8-11-1947 from A.Narsappa.

2. This office Ref.B.4/16749-47 dated 20-11-1947;

3. No.C.3/10790-47 dated 12-11-1947 from Commissioner, Mangalore Municipality.

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The petitioner is informed that he may, if so advised, appeal to the Government and get stay orders from the Government within two months from this date.

For Collector.

To the petitioner thro' Mr.C.L.Lobo, B.A., B.L., Advocate, Mangalore.

Copy to the Commissioner, Mangalore Municipality.

9.12.47

R.F.No.54/47. 15947/47.

Municipal Office, Mangalore.
Dated 11th March 1947.

Endt. on the application dated the 9th December 1946 from Sri A.Narsappa, Attavar, Nandigudda road, requesting licence for constructing compound wall and gate pillars in T.S.No.190- 1 of 23rd Ward and further letters dated 8th Jan.47 and 12th Feb.47 requesting that conditional licence may be granted stating the wall and gate pillars will be removed when the widening of Nandigudda road under Falnir Town Planning Scheme is taken up for execution.

Read: Town Planning Committee Resolution No.3 dated 16th January 1947 and 38 dated 28th February 1947.

Licence applied for is refused under Section 203(1) of the Dt.Municipalities Act read with Section 17 of the Town Planning Act as the proposal would effect the widening of Nandigudda road in Falnir Town Planning Scheme.

Conditional licence applied for cannot also be granted. The applicant is informed that the question of granting licence for enclosing the site with compound wall will be considered if he renews his application proposing the construction clear of the contemplated road widening at the place.

Sd...

Commissioner.

To

Sri A.Narsappa, Attavar, Nandigudda road, Mangalore.

Copy to Municipal Health Officer and Town Planning Officer,

Copy to office Notice Board.

V/15.3.

Compd. 17-3.

(True copy)

Telegram (Express)

The Commissioner, Mangalore Municipality

~~The Collector of South Kanara~~

Town Planning — Mangalore Municipality
Unauthorised construction of compound wall
and gate pillars by A. Narasappa — Demolition.
Commissioner's proceedings C 3. 10790/47.
dated 13-11-47. ~~Stay~~ action pending
Govt. orders

Note

Please see the joint Secretary's orders
at pp 3 and 3 C.J. The appeal at pp 7-11 C.J
will be examined and put up after
the issue of the telegram

Special

L & P. H (F2)

Sub: Town Planning - Mangalore Municipality - Alleged unauthorised construction of a compound wall and gate pillars - Demolition - appeal.

Ref: From Sri. A. Narasappa dt 9-2-48 (in telegram form)

Memo: 9875/45-1/47-3F2(A) P.4 - 11-2-48

Referred to the Commissioner for remarks. Report should be furnished by the Mangalore Municipality to be submitted sent through the Collector of South Kanara and the Director of Town Planning.

The commissioner is also requested to forward the connected Municipal files for reference.

by express
12/2/48

To
The Commissioner,
Mangalore Mcty.
through the Collr
(with a copy of P.P. 3-4 of and
PP 5-11 in original to be returned)

Copy to
The Collector, South Kanara
D.T.P.

11/2/48
11-2-48

12-2-48

11-2-48

R 2/3/48
2-3-48

EAPH(A2)

Sub: Town Planning - Mangalore Municipality - Alleged unauthorised construction of a compound wall and gate pillars - Demolition - appeal.

Ref: Govt memo no: 98745/47-3 E2 PH-2 11-2-48

TMemo: 98745/47-4 E2 PH dated 15-3-48

The Commissioner, Mangalore Municipality is requested to expedite his reply to the memo cited above. The matter should be treated as Special.

13-3

The Commissioner,
Mangalore Mfy.
(Thro the C.M.C.)

KA 18/3/48

13.3.48

C3. 10790/47

Municipal Office, Mangalor
Dated 23rd February, 1 9 4 8.

From

Sri M. Narayana Shenoy, B.A., B.L.,
Commissioner, Mangalore Municipality,
M a n g a l o r e.

SOUTH KANARA
COLLECTOR'S OFFICE.
1 4 FEB 1948
No. Through

The Secretary to Government,
Education and Public Health Department,
M a d r a s.

The Director of Town Planning, M a d r a s.
The Collector of South Kanara, Mangalore, and
The Chairman, Municipal Council, Mangalore.

Sir,

Subject: Town Planning - Mangalore Municipality - Falnir Town Planning scheme - unauthorised construction of compound wall and gate pillars - T.S.No.190-1 of 23rd ward.
Reference: Government Memorandum No.98745-47-3-F2 P.H. D/11-2-48

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1. In his petition dated 9-2-48 to Government, Sri A.Narsappa, owner of T.S.No.190-1 of 23rd ward has appealed to the Government against the orders of the Commissioner for demolition of appellant's compound wall in T.S.No.190-1 of 23rd ward for reasons stated in his appeal.

2. The site T.S.No.190-1 of 23rd ward is situated within Falnir Town Planning Scheme sanctioned in G.O.No.1631 L.S.G. dated 3rd May 1937. According to the provisions of clause 9 (a) and 9 (b) read with item No.40 of schedule III the road immediately in front of the site under reference (viz) Nandigudda Road is to be widened into a 50 feet road and the portion of T.S.No.190 immediately adjoining the existing road, covering an extent of 3¾ cents has been reserved under the scheme for the contemplated widening of the road in schedule V of the scheme.

3. Sri A.Narsappa applied for licence for the construction of compound wall and gate pillars in the site T.S.No.190-1 in his application dated 9th Decr.1946 which was received in this office on 10-12-1946. Section 18 of the Town Planning Act expressly providing that all owners of lands and buildings in the area affected by the scheme who propose to construct or reconstruct or in any way alter or add to building shall conform in every particular with the requirements of such scheme and that no building shall be constructed or reconstructed in any area in which building is expressly forbidden in the scheme or which

is reserved in the scheme for any purpose incompatiable with the building, the proposal was not recommended by the Town Planning Officer in his report dated 14-12-1946 for the reason that the construction of the compound wall and gate pillars abutting Nandigudda Road would affect the widening of the road under the scheme. The application was placed before the Town Planning Committee and the committee in its resolution No.3 dated 16-1-1947 resolved refusing the licence applied for. While the matter was before the Town Planning Committee, Sri A.Narsappa in his further petition dated 8-1-47 in reply to this office endorsement C3.15947/46 dated 13-12-46 informing him that his application is under consideration and that no construction should be carried on until a licence is granted, had stated in para (4) of his petition that in case if the construction applied for is found objectionable under the Town Planning scheme, he would be prepared to remove the said construction and allow any space of margin at the road side and requested that on the above assurance licence applied for by him may be granted immediately. This later application dated 8-1-1947 of the party being a request for the grant of a conditional licence superseding his original application dated 9-12-46 for the grant of an ordinary and usual licence, in consonance with the instruction contained in G.O.No.Ms.1765 Edn. & P.H. dated 14th June 1946, the request was not recommended by the Town Planning Officer in his note dated 15-1-1947 and the file of connected papers having been pending before the Town Planning Committee, this later application of the party was also marked for consideration of the Committee. It was because of this subsequent application of the party requesting for the grant of a conditional licence, orders were not issued communicating the refusal of the Town Planning Committee on his original application dated 9-12-46. The Town Planning Committee in its resolution No.38 dated 28-2-1947 also refused to comply with the later request of the party for conditional licence. Licence was refused in this office R.F.No.54/46 -- 15947/46 dated 11-3-1947 informing the party that

conditional licence applied for cannot be granted. He was also informed that the question of granting licence will be considered if he renewed his application proposing the construction clear of the contemplated road widening at the place. From the facts explained above it may be seen that final orders refusing licence had been passed within 3 months of 8-1-1947, the date of his application requesting for the grant of a conditional licence and the statement of the party in para 5 of his appeal that the Responsible authority is deemed to have granted the permission applied for is not correct.

4 The statement of the party in para (4) of his appeal that no new compound wall had been constructed in the site and that only the existing old compound wall had been repaired is far from correct. The application of the party requesting licence to construct compound wall and gate pillars in the site T.S.No.190-1 and the plans furnished along with the application, contained in the file R.F.54/46 - 15947/46, all of them signed by the appellant, would go to disprove the aforesaid statement. Instead of ornamental gate pillars shown in the plan, ordinary and plain pilasters serving as gate pillars have been constructed and the statement of the appellant that no gate pillars have been constructed is also not correct. While in his appeal before the Municipal Council and petition dated 24-9-47, before the Collector of South Kanara, the appellant had stated that the compound wall and gate pillars had been repaired at a cost of Rs.8500/-, in para (3) of his present appeal to Government the appellant states that only very urgent and necessary repairs to the existing old compound wall had been carried out by him at a cost of Rs.800/- and odd. This disparity is also brought to the special consideration of Government to decide whether the compound wall had been newly constructed or repaired. As it is beyond normal conception to accept the statement that a compound was repaired at a cost of Rs.8500/- it would appear that the appellant has purposely brought down the cost to Rs.800/- in the present appeal to Government.

5 Inspite of the refusal order, the compound wall and gate pillars were constructed abutting the road in May 1947 and therefore

under section 19 of the Town Planning Act with the approval of the Responsible Authority of the scheme "The Mangalore Municipal Council" as per clause 3 of the Falnir Town Planning scheme accorded in Council Resolution No.18 dated 7th July 1947 and No.7 dated 7th Augt.1947, provisional and confirmation orders directing the demolition of the compound wall and gate pillars constructed in the contemplated alignment of the road under the scheme were issued in this office notices C3.No.10790/47 dated 9th July 1947 and C3.No.10790/47 dated 19th August 1947 respectively and served on the appellant Sri A.Narsappa on 12th July 1947 and 25th August 1947 respectively. As the party had not complied with the directions issued in the orders, referred to above, final orders were passed in my proceedings C3.No.10790/47 dated 13th Sept. 1947 directing and authorising the Town Planning and Building Inspector to demolish the unauthorised construction offending the scheme proposal and provisions. The statement in para (6) of the appeal petition that the scheme provisions had not been offended and that provisional and confirmation orders had not been served on the appellant are not correct. The orders were served in person on him as would be evidenced from his signature dated 12th July 1947 and 25th Augt.1947 in the service copies of the provisional and confirmation orders respectively, in pages 14 and 22 of the current file C3.10790/47.

6 On the aforesaid proceedings, the appellant appealed to the Collector of South Kanara who after calling for the connected papers from this office passed orders in his L.Dis.No.12814/47-I dated 7-10-1947 informing the appellant that there was no jurisdiction for the Collector to interfere in the matter.

Simultaneously with his appeal to the Collector, the appellant filed another appeal before the Council. The newly constituted Council, after giving due opportunity to the appellant to represent his case, rejected his appeal in its resolution No.35 dated 8-11-1947. The allegation made in para (6) of the appeal against the Council is far from the truth. The appellant was informed of the decision of the Council on his appeal petition and orders were again issued in my proceedings C3.10790/47 dated 13-11-1947 directing and authorising the Town Planning and

Building Inspector to demolish the unauthorised construction, taking, if necessary police aid.

8 Regarding the allegation of the appellant that the Responsible Authority has not taken any steps to acquire this land of the appellant for the widening of the road, even though it is now over 10 years since the scheme was sanctioned, it is submitted that after the scheme was sanctioned in 1937 the arbitration proceedings and subsequent appeals thereon had dragged on for another 3 to 4 years and inspite of the conditions created by war and lack of technical personnel, most of the interior roads to be opened by the Municipality under the scheme had been completed and all efforts are now made to expedite the carrying out of the entire proposals of the scheme, so as to enable the development of the area comprised within the scheme, within a period of 20 years as provided in the scheme.

The appellant states that he is a lorry owner and possesses several lorries and cars. That may be true, but if he wishes to park all his lorries in his residential compound, it would be advantegous for him to set back the wall as at present the road in front is narrow.

As ordered in Telegram from Government dated 9-2-1948, further action on the unauthorised construction has been stayed. There has been no proceedural irregularity. The appellant has with open eyes deliberately constructed the wall and gate pillars, not repaired them, in contravention of the provisions of the sanctioned scheme and he has no equity in his side.

The enclosure in original received along with the Government Memorandum No.98745-47-3-F2 P.H. dated 11-2-1948 containing 16 pages and this office file R.F.54/46-15947/46 (containing 18 pages) and C3.No.10790/47 (containing 82 pages) are submitted herewith. I request that this office files may be returned ~~back~~ along with orders of Government on the matter.

26/2

Commissioner

Forwarded

CHAIRMAN,M.C.

26/2

p.t.o.

Enclosure:

1) Enclosure in original received along with Govt.Memo No.98745-47-3-F2 P.H. dated 11-2-1948 containing 16 pages.
2) Municipal Office file R.F.54/46-15947/46 containing 18 pages.
3) Municipal Office current file C3No.10790/47 containing 82 pages.

NDis e.no. 3764-48.

Forwarded to the Director of Town-Planning Madras. with the enclosures. Attention

For Collector

2/3/48

N. Dis C. No 3767-48.

Forwarded with all enclosures through the Director of Town Planning, Madras.

2/- Certain irregularities which would vitiate the eviction proceedings, if proved, were contended by the petitioner and a breach of the ~~Condit~~ peace was apprehended in case of the execution of the eviction order. The eviction proceedings were therefore stayed under Sec 36(2) of the District Municipalities Act 1920, in this office proceedings Ref. No 16749-47-B4 dated 20.11.47, for a period of two months, thereby allowing the applicant sufficient time to take up the matter with the Govt, if he wished, and get the matter finally decided. This fact was reported to the Government in this office Ref. No 16749-47-B4 dated 9.12.47.

TPA, for urgent remarks. Rcvd 13.3.48 plans

3/- The Commissioner, Mangalore Municipality

there, in his report in the file, dealt fully with all the points raised in the appeal memorandum.

South Kanara Collector's Office; Mangalore
Dated. 6 3. 1948

S R Kanvar
Collector.

57.3/48

C3.No.10790/47.

Municipal Office, Mangalore,
dated the 24th March, 1948.

From

Sri M.Narayana Shenoy, B.A.; B.L.,
Municipal Commissioner, Mangalore.

To

The Secretary To Government,
Education and Public Health Department, Madras.

Thro'

The Chairman, Municipal council, Mangalore.

Sir,

Sub: Town Planning - Mangalore Municipality - Falnir Town Planning scheme - Unauthorised construction of compound wall and gate pillars - T.S.No.190-1 of 23rd ward.

Ref: Govt.Memo.No.98745/47-4-F2, P.H., dated 15-3-48.

24303

The reply called for, along with the connected files was already submitted to Government through the Director of Town Planning, Madras and the Collector of South Kanara, Mangalore, in this office letter C3/10790/47 dated 23-2-1948.

Commissioner. 30 3 48

Forwarded

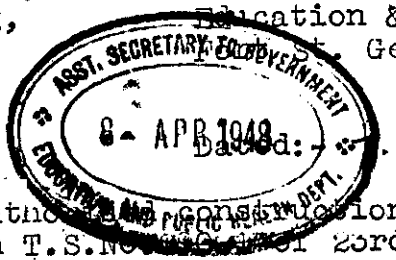
Chairman, M. C.

V/30-3-48.

30/3/48.

From
K.M. Unnithan Esq., I.C.S.,
Director of Town Planning,
Old High Court Buildings,
1st Line Beach, Madras.

To
The Secretary to Government,
Education & Public Health Department.
Fort St. George, M A D R A S.



L.Dis.No.713-48 Dated: 4-4-48. Recd 12 4 48

Sub:-Building - unauthorised construction of compound wall and gate pillars in T.S.No. [illegible] 20rd ward - Mangalore - Falnir Town Planning Scheme - petition of A. Narasappa to Government - Forwarded.

25835 Ref:-Government Memo No.9s745-47-3-F2 P.H. dated 11-2-48.

The petition of Sri A. Narasappa, report of the Commissioner Mangalore Municipality and the remarks of the Collector, together with Municipal file are forwarded.

It is clear that the compound wall and gate pillars had been deliberately constructed by the party against the lawful orders of the Executive Authority.

Government may therefore decline to interfere in the matter in the circumstances explained by the Commissioner, in his detailed report C3-10790/47 dated 25-2-48.

For Director of Town Planning.

Encl:
1. Petition of Narasappa with enclosures.
2. Commissioner's letter C3-10790-47.
3. Collector's N.Dis.3767-48.
Municipal files.

HB.

'G.O: 1631 L.S.G 17. 3.S: 37, required for the
of the file ~~has been~~ was called for. The M.O has been
Chilton on 13.4.48 and it has not yet been received
may lie over till 24.4.48

KH
14.4.48

L
19.4.48

C 110987 45/47 F2

Edn. & P.H.(F2.) Dept.

Town-Planning - Mangalore Municipality - T.S. No.190-1 Unauthorised Construction of a compound wall and gate pillars by Sri A. Narasappa - Appeal against orders of demolition - Orders passed.

Ref:- From the Collector of S. Kanara, Ref.No.B4-16749-47 dated 9.12.47.
From the D.T.P., N.dis.No.4691-47 dated 27.12.47.
From Sri A. Narasappa, petition dated 9.2.48.
From the Commr., Mangalore Municipality, C3-10790-47 dated 23.2.48.
From the Collector of S. Kanara, N.dis.C.No.3767-48 dated 6.3.48.
From the D.T.P., L.dis.No.713-48 dated 7.4.48.

Order/Ms.No. 3017 P.H. dated 3.9.48.

One Sri A. Narasappa of Mangalore has appealed to the Govt. under section 19(3) of the Madras Town Planning Act, 1920, against the orders of the Responsible Authority of the Mangalore Municipal Council's Falnir Town Planning Scheme, requiring the demolition of the unauthorised construction of a compound wall and gate pillars put up by the appellant in T.S.No.190-1 of ward No.23 of the Municipality. The grounds of appeal are:-

(1) that he has not constructed a new compound wall with new gate pillars but that he only carried out repairs to the extent of Rs.800/- to the existing old compound wall;

(2) that, with reference to his application dated 9.12.46, the responsible authority failed to issue orders, granting or refusing permission for the construction within 3 months of the date of application, as required under the proviso to section 17 of the M.T.P. Act and that such failure should be deemed to have impliedly amounted to the grant of the permission applied for, so that the construction was no unauthorised;

(3) that the appellant has not offended the provisions of clauses 9 (a) and 9(b) or any other provision of the Falnir Town Planning Scheme and the he was not given any provisional or confirmation orders under section 19 of the T.P. Act; and

(4) that the municipality has not taken any

steps to acquire the land in question for over 10 years and he is therefore legally entitled, under the provisions of the M.D.M.Act, the T.P. Act and the Falnir T.P. Scheme to continue to use the land for the purpose for which he and his predecessors were using it, by repairing the old wall or by reconstructing it.

2. The various grounds of appeal are examined below:-

Item (1) above:- In his application dated 9.12.46 and petitions dated 8th Jan. 1947 and 12th Feb. 1947, the appellant had specifically applied for permission to construct a compound wall and gate pillars and not for repairing the old compound wall and gate pillars. Moreover, in his petition dated 25,9.47 to the Municipal Council, Mangalore, the appellant stated that he had repaired the compound wall and gate pillars at a cost of Rs.8,500/- but in his appeal petition to Govt. dated 9.2.48, he has stated that only petty repairs were made to the existing compound at a cost of Rs.800/-. The Govt. consider ~~in an attempt to show~~ that the petitioner has purposely brought down the cost to Rs.800/- (in an attempt to show) that only 'repairs' were carried out to the existing compound wall. The Govt. do not accept the appellant's contention that only "repairs" were made to the existing compound wall and gate pillars.

Item (2) above: The Govt. consider that this contention is not valid in as much as the appellant, according to his own statement made in his petition dated 25,9.47 to the Municipal Council, had begun the construction in Feb. 1947 i.e. within 3 ~~months~~ months from 9.12.46, the date of his application. According to section 17 of the M.T.P. Act, he ought not to have begun the construction "unless he had applied for and obtained" permission in that behalf. The construction was therefore commenced and completed without proper permission and was unauthorised. Moreover, the construction was put up in an area reserved under the Falnir T.P. Scheme for a road and was therefore

absolutely prohibited under section 18 of the Madras Town Planning Act.

Item (3) above: The Govt. are satisfied that the construction ~~had~~ contravened the provisions of the Falnir Town Planning Scheme. The appellant was on 12th July 1947 and 25th Aug. 1947, duly served with copies of the provisional and confirmation ~~orders~~ orders passed by the Responsible Authority under section 19 of the ~~M.D.T.~~ T.P. Act and issued in the Commissioner's reference C3-No.10790/47 dated 9th July 1947 and C3 No.10790/47 dated 19th Aug. 1947 respectively. The contentions in item (3) above are not acceptable.

Item (4) above: The Municipal Commissioner's report shows that every endeavour has been and is being made by the Council to push through the scheme. The contention of the appellant is ~~therefore~~ not maintainable.

3. The Government have examined the case fully and ~~xxxx xxxxx~~ are satisfied that action taken by the Responsible Authority and the Commissioner under section 19 of the T,P. Act was quite correct. The appeal petition cited above is therefore rejected under section 19 of the Madras Town Planning Act. The stay order issued in the telegram dated 9th Feb 1948 is hereby vacated.

To
The Petitioner.
The Commr., Mangalore Municipality thro' Chairman. (with his office file 'A').
Copy to the Collector, South Kanara (with his office file at M').
Copy to the D.T.P.
Spare Copy.

Sri A. Narasappa, Proprietor Shri Sharda Transport service Mangalore town

C.No.98745/F2/47. Edn. & P.H.(F2)Dept.

From the Collector of South Kanara, Ref.No.B4-16749/47, dated 9-12-1947.
From the D.T.P., N.Dis.No.4691/47, dated 27-12-1947.

Town-Planning - Mangalore Municipality - Falmar Town-Planning Scheme area - Unauthorised construction of a compound wall and gate pillars by one, Sri A. Narasappa in T.S.No.190/1 - Demolition orders by Commissioner ~~and Council~~ Stay by Collector - Approval of - Commissioner ~~and Council~~ directed to ~~show cause~~ explain.

Memo.No.98745/47-2-F2-P.H.dated

On the petition of one, Sri A. Narasappa of Mangalore the Collector of South Kanara has, under section 36(2) of the M.D.M. Act, 1920, suspended the order of the Commissioner, Mangalore Municipality in which the Commissioner directed ~~directing~~ the demolition of the unauthorised construction put up by the petitioner in T.S.No. 190/1, lying in the area of the Falmar Town-Planning Scheme, Mangalore. A copy of the Collectors report to the Government in the matter is ~~herewith~~ enclosed.

The Commissioner, Mangalore Municipality, is hereby requested, under section 36(2) of the M.D.M.Act, 1920, to explain why the stay orders of the Collector should not continue

in force for ~~two~~ months from the date of ~~this order~~, or, if in the meantime, the aggrieved party submits an appeal to the Govt. under section 19(3) of the Madras Town Planning Act, 1920, until final orders are passed by the Government on that appeal.

To

The Commr.,
Mangalore Mty.
thro' the C.M.C
(with a copy of
page 1 c.f.).
Copy to the Collect
of S. Kanara.
Copy to the D.T.P.

ASSISTANT SECRETARY
30 JAN 1948
LEGAL DEPARTMENT

29-1-1948

LEGAL DEPARTMENT.

The view of J.S., E. & P.H. on page 2 ante is correct and the course suggested at A is the appropriate and ~~proper~~ correct step to be taken in this case.

22-2-48

Legal No. 1131/47
3-2-48

Education and P.H.Dept(F.2.)

C.No. 10071 From Sri A. Narasappa dated 9-2-1948.

Telegram to the Commissioner, Mangalore Municipality dated 9-2-1948.

Please see the petition from Sri A. Narasappa at pp 3-7 c.f., the Joint Secretary's orders at page 3 c.f. and the telegram and footnote at page 19 c.f.

2. The case relates to an alleged unauthorised construction of a compound-wall and gate pillars by one Sri A. Narasappa in Mangalore. The Commissioner has ordered the demolition of the construction and the appeal at pp 3-7 c.f. is against these orders of the Commissioner. Before the appeal is considered, the remarks of the Commissioner, the Collector and the Director of Town Planning may be called for. The Commissioner may be asked to forward also the connected municipal files.

A draft memo is submitted.

11-2-48

11-2-48

11-2-48

[Issued as memo: 98745/47-3 F2 P Hqrs 11-2-48
From the Commissioner, Mangalore Mty
C3: 10790/47 dt 23-2-48]

[Issued as memo: 98745/47-3F2 dt 11-2-48]

[From the Commr., Mangalore Mty
: C3: 10790/47. dt 23-2-48]

[previous note need not be read]

Sri. A. Narasappa, owner of T.S No: 190-1 of 23rd ward of Mangalore Mty, applied on 9-12-'46 to the Commr., Mangalore Mty for permission for the construction of a compound wall and gate pillars in the above site. The site is included in the Falnir T.P. Scheme, sanctioned in Go: 1631 L.S.G dated 3-5-'37. According to the above G.O, Nadiguda road immediately in front of the above site is to be widened into a 50 ft road, and the portion of the above site, immediately adjoining the existing road, covering an extent of 3 3/4 cents has been reserved under the Scheme for the contemplated widening of the road. The matter was placed before the Town Planning Committee and the Committee in its resolution no: 3 dated 16-1-47, refused to give the permission applied for by the petitioner for the construction of the compound wall and gate pillars but no reply had yet been given to the petitioner. While the matter was still before the Town Planning committee, the petitioner in his application dated 8-1-47 applied for a conditional permission or a permission on condition that the construction be demolished if found objectionable. The T.P. Committee in its resolution no: 38 dated 28-2-47, refused to comply with the request of the party for conditional licence, according to the instructions contained in Go No: Ms: 1765 P.H.A 14-6-1946 and informed

p 1-15

p 26 c/f

p 26 c/f

p 26 c/f

p 13/(M)

p 15/(M)

informed the petitioner of this fact on 11.3.47. The petitioner thereafter filed an appeal to the Municipal Council, against the eviction orders issued by the Council, which was rejected by the Council in its resolution no: 35 dated 8-11-47. The Commr., thereupon in his proceedings dated 13-11-47, directed the Building Inspector to demolish the construction taking police aid, if necessary. The Collector of S. Kanara in his proceedings dated 20-11-47, issued stay orders and the petitioner was also informed by the Collector that he might be advised to appeal to Govt. The petitioner has now submitted an appeal to Govt on the following grounds:—

(1) that repairs to the tune of Rs 800/- only to the existing old compound wall were made to park his lorries with loads costing several thousands of rupees, which are engaged for the transport of coffee and tea from the various estates in Mysore to the companies in Mangalore town.

(2) that he has not constructed a new compound wall with new gate pillars.

(3) that under section 17 of the T.P. Act, the Municipality having failed to communicate the orders within three months as to the granting or refusing of the permission applied for, it or the responsible authority should be deemed (impliedly) to have granted the permission applied for.

(4) that he had not offended the provisions of clauses 9(a) and 9(b) or any other provisions of the Padur T.P. Scheme nor was he given any provisional or Confirmation orders under section 19 of the Town Planning Act.

(5) that as the municipality has not taken any steps to acquire the land in question for over ten years, he is legally entitled under the provisions of the M.D.M. Act, T.P. Act and Talvir T.P. Scheme to continue to use the land for the purpose for which he and his predecessors were using it by repairing the old wall or by reconstructing it. 'A'

2 The petitioner requested the Govt to issue stay orders in the mean time and the Govt in its telegram at p.19 cf ordered the Commr to stay action pending orders. The various grounds of appeal at A on pp 5-6 and are examined below:- Para 11, p 7 cf

Item (1): In his appeal to the Municipal Council dated 25-9-47, the petitioner stated that the compound wall and gate pillars had been repaired at a cost of Rs 8,500/- whereas in his present appeal he has stated that petty repairs to the time of only Rs 800/- were made to the existing compound wall. The Commr in para 4 at p. 27 cf points out this disparity and says that this would reveal that the compound wall is newly constructed. The Commissioner also submits that the petitioner has purposely brought down the cost to Rs 800/- in the present appeal to Govt to show that only repairs had were carried out. 'A' on p 5 ante para 5, p 5 of (A) 'M' on p. 4 cf para 6, p 7 cf. This was obviously a new construction for the Compd. wall, this fact quite admitted. The Repn contention is obviously an afterthought.

Item (2): The Commissioner submits that the applications from the petitioner in the Municipal office file at (M), all of them signed by the appellant, would show that the party applied for permission for the construction of the compound wall and gate pillars and not for merely carrying out repairs. 'A' on p 5 ante CC 1/7 p. of 15, p 15/(M) This has to be accepted. CC 1/7

Item (3): The original application of 'A' on p 5 ante

11) the petition was dated 9-12-1946. The application for conditional permission was dated 8-1-47 and the conditional permission was refused on 11-3-47, within three months of the application as required by section 17 of the T.P. Act. A reply to the original application dated 9-12-46 was not given as the Commissioner thought that the original application dated 9-12-46 was superseded by the application dated 8-1-47. The petitioner seem to take advantage of the failure to give a reply to the original application. This apparently is not the correct view, as the original application should be deemed to have been superseded by the second application for conditional permission.

p 26 c.r

Legal may advise in this point. sd/- 8-5-48

5th cont Item (4): The Commr points out that signatures of the petitioner were obtained in the provisional and confirmation orders at pages 14 and 22 of the Municipal office file at (A).

on p 6 ante Item (5): A reference is invited to the remarks of the Commr in para 8 on p. 29 cf.

S 8/5/48

3 It is clear from the above note that the petitioner has made a number of false statements: ~~The presumption of the Collector in paras 3 and 4 at p 1 cf about the conduct of the Commissioner in the matter do not also seem to be correct.~~ The D.T.P at p. 35 cf points at that it is clear that the compound wall and gate pillars had been deliberately constructed by the party against the lawful orders of the Executive authority, and suggests that Govt. may decline to interfere in the matter.

M

4 The recommendations of the D.T.P may be accepted. Legal may see

PTO

efore enumeration.

8.5.48

C.47

8-5-48

Legal

Dlhr 98745 Fy. 5
11 5.48.

0

5922

Legal Department

The opinion of this Department appears to be required only on item (3)Ⓐ. The contention that the application dated 9-12-46 was superseded by the application dated 8-1-47 and that the period of three months will count only from the latter date does not appear to be correct. The application dated 8-1-47 does not bear any court fee stamp nor is it in the prescribed form. It purports to be only a reply to the endorsement of the Commissioner dated 13-12-46. It repeats the request contained in the earlier petition and, with a view apparently to persuade the concerned authority to grant the request, furnishes an undertaking. Further, ~~the terms of~~ the communication finally sent to the applicant on 11-3-47 (page 17 of (M)) refers to and contains orders on both the applications. The failure to communicate to the petitioner the resolution dated 16-1-47 before 10-3-47 appears to be an omission within the meaning of the proviso to section 17 of the Town Planning Act.

Ⓐ pp6-7 ante

ASSISTANT SECRETARY
13 MAY 1948
LEG. L DEPARTMENT

p13-7(M)

But this is not the same thing as saying that the appellant's construction was justified. The permission which under the Act may be deemed to have been granted came into existence only on 10-3-47. But according to the statement of the appellant at B on page 25 c.f. in (A), he began his work in February; that is to say, before the permission came even notionally into existence. So it cannot be said that the work was done under any permissio

actual or presumed. Section 17 (1) of the Town Planning Act prohibits a person from making any construction unless he has applied for and obtain permission in that behalf. It is only thereafter that the construction can be taken up. The resul therefore is that the appellant's construction is not protected.

13/6/48

Legal u.o. 5922/48-1
d. 13.6.48.

EPH

Summoning note at pp 4-8 ante and EXPHCR

Please see the note of Legal Dept at pp. 8-9 ante. The file may now be circulated to H.M (P.H) HM(LA) and HM (Ho) for orders with reference to 'M' on p 7 ante.

KA 24.6.48
S. 26.6.48

28/6/48

13/6/48 D.S / J.S

The various contentions raised by the appt are unacceptable. The construction is in contravention of the scheme and the action taken by the Comm under S19 of the Act was quite correct. The stay order may be vacated & Govt may reject the appeal.

1/7/48

98765-/47-6-F2 PH.
2.7.48

HM(PH) 3/7
HM(LA) 4/7
HM(Ho). I agree & the note put up by the Department.

10/7/48

034
2.7.48

PUBLIC HEALTH DEPT. 44136

12 JUL 1948

For decision with legal

22/7

22/7/48

KM 15.7.48

17-7-48

17.7.48

21/7 Hon.

JS

On going through the papers appeal, it is found that the appellant has not taken any steps in pursuing the case against the impugned order.

As this will be an order passed under statutory forum (Sec. 9 of the SR Act), the order may briefly meet the various points raised by the appellant. Perhaps quickly as 21 days already delays this.

18/8/08.

A revised draft order is submitted for approval.

23.8.08

24-8-08

24/8/08

25.8.08

25

31/8/08